

A D D R E S S E S

Presentation of Portrait of Chief Justice

Leonard Henderson

to the

Supreme Court of North Carolina



LEONARD HENDERSON

ADDRESS

OF

JUDGE ROBERT W. WINSTON

Presenting the Portrait of Chief Justice Henderson to
the Supreme Court of North Carolina

ADDRESS OF ACCEPTANCE

BY

CHIEF JUSTICE WALTER CLARK

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Address of Judge Robert W. Winston

Mr. Chief Justice and Associate Justices of the Supreme Court of North Carolina:

“When Cellini’s statue of Perseus was first exhibited on the Piazza at Florence, it was surrounded for days by an admiring throng, and hundreds of tributary sonnets were placed upon its pedestal.” We are assembled today in this hall, whose walls are adorned with portraits of our State’s great jurists, and in the presence of worthy successors to those judges, whose “dignity, wisdom and ability have made North Carolina’s proudest possession her courts of justice,” to hang in its proper place, between Taylor and Ruffin, a portrait of Chief Justice Henderson. In the name of the living kinsfolk of him, of whom Judge Pearson, in the leading case of *State v. Deal*, 64 N. C., 273, declared, “His powers of reflection exceeded that of any man who ever had a seat on this bench, unless Judge Haywood be considered his equal in this respect,” I present to you this portrait of Leonard Henderson, one of the first Justices of this Court upon its organization in its present form in 1818, and Chief Justice of this Court from 1829 to the date of his death in 1833.

The Chief Justice’s grandfather was Colonel Samuel Henderson, who was the first high sheriff of Granville County. The Henderson family removed from Hanover County, Virginia, to Granville County, North Carolina, about the year 1740, and here Colonel and afterwards Judge Richard Henderson, son of Samuel Henderson, married Elizabeth

Keeling, from which marriage sprang the jurist, Leonard Henderson. A man's education begins, they say, hundreds of years before he is born, and hence it is not difficult to trace to their source certain characteristics of the Chief Justice—his originality, his independence, his rugged personality. How could he have been otherwise? Samuel Henderson, the grandfather, strong and rugged, had executed his writs, subpoenas, and other processes, a-foot through the forest primeval, traversing a territory from Virginia on the North to Johnston on the South, and from the mountains on the west to Northampton on the east. "The father, Richard Henderson, holding the minor office of constable, and fired by a noble ambition, determined to enter the profession of the law." He accordingly read such books as were to be had, and after a short time presented himself for examination to the Chief Justice of the General Court, upon whose certificate of proficiency the Governor would issue a license to practice law. When this stripling of the law made known to the examiner that he had scarce been sorrowing at the feet of Coke and Littleton twenty months, not to mention twenty years, he was rudely advised to go home and not undertake to stand for his license, to which our undaunted young disciple of Themis stated with promptness and spirit, that he had come not to ask advice or seek a favor, but to demand a right. It is needless to add that the license was worthily won, in the teeth of the most rigid examination. Subsequently, Colonel Richard Henderson attained the highest honor of the profession under the Royal Government, and after the War of the Revolution and the adoption of the Constitution of the United States, he was elected one of the first three Justices of the Supreme Court of North Carolina. This office he shortly resigned, or refused to accept, the reason being that he had more ambitious schemes afoot. He had undertaken to establish a new colony in the west,

and to this end had organized the Transylvania Land Company, which purchased of the Cherokee Indians vast tracts of land in Kentucky and Tennessee. The position of Governor or President of this colony called him from his new honors in North Carolina. This colony progressed so far that it sent delegates to the Continental Congress at Philadelphia, asking to be admitted as the fourteenth State of the Union. Of Colonel Henderson it is said that he was the only private American citizen who had a chaplain of his own. When he went into Kentucky with his expedition he was accompanied by a clergyman of the Church of England, who acted as chaplain of his forces, and opened with prayer Henderson's first Legislature. This good man was shortly afterwards scalped by the Indians, who no doubt found him an easier prey than the heroic president of the company.

Wheeler, in his *Reminiscences*, gives some interesting facts connected with the life of Colonel Richard Henderson. "On 1 March, 1769," quoting from the record, "at a meeting of the counsel, there being present Governor Tryon, John Rutherford, Benjamin Herron, Lewis DeRossett, and Samuel Strudwick, Richard Henderson was appointed assistant Judge, as also Maurice Moore, Esq. Governor Tryon reports that 'Richard Henderson, Esq., is a man of ability, born in Virginia and living in Hillsboro, where he is highly esteemed.'" Colonel Henderson must have led a life of much daring and some adventure. For example, on 24 September, 1770, he wrote Governor Tryon that on that day Herman Husbands, James Hunter, William Butler, Ninnian Bell Hamilton, Jeremiah Fields, Matthew Hamilton, Eli Branson, Peter Craven, John Truitt, Abraham Teed and Samuel Parks, armed with cudgels and cowhide whips, broke up the court and attempted to strike the Judge and made him leave the bench. They assaulted and beat John Williams severely, and also Edward Fanning,

until he retreated into the store of Messrs. Johnston and Thackston, and demolished Fanning's house. Not only were these beaten, but Thomas Hart and John Ludlow, Clerk of the Crown, and many others were severely whipped. Another entry of date 25 January, 1771, is an order entered by the Regulators that Richard Henderson, who appeared as prosecutor of several charges against Thomas Pearson, should pay all costs.

Judge Richard Henderson's family consisted of four sons and two daughters. Of these William Henderson was a gallant soldier of the Revolution, Lieutenant-Colonel of the Third South Carolina Regiment, captured at Charleston, exchanged to First South Carolina Regiment, a hero of Eutaw Springs, where he was severely wounded 8 September, 1781. Archibald Henderson, an elder brother of the Chief Justice, was declared by Judge Murphy to be "the most perfect model of a lawyer the bar has ever produced, and he contributed more to give dignity to the profession than any lawyer since the days of General William R. Davie and Alfred Moore. One need not be told that he was the grandfather of John Steele Henderson, of Salisbury. Archibald Henderson was wont to say that he had known many good lawyers, but few good judges, and in true Baconian fashion, proceeded to grade judicial qualifications in this wise: First of all, good common sense; next, an intimate knowledge of men, particularly of the middle or lower classes—their passions, prejudices and modes of thought; thirdly, good moral character, subdued feelings without prejudices and partiality; then independence and energy of will; and, last of all, legal learning. Mr. Henderson must have been a most loyal party man to cast his vote as a member of Congress for Burr instead of Thomas Jefferson for President of the United States. Most of the Congressmen from our State voted for Mr. Jefferson. Indeed, so strong a Federalist as Marshall was induced by

Hamilton to vote for the Republican, Jefferson, rather than for Burr. This is the real secret of the Burr-Hamilton duel, the remark made by Hamilton concerning Burr at the gubernatorial caucus in Albany being but the pretext. Mr. Henderson was buried in Salisbury, and a monument was erected to his memory by the bar of Western North Carolina, this being the only monument ever erected in North Carolina to a member of our bar by his fellows. He was often a member of the General Assembly and a representative of his district in Congress. He left surviving two children, Archibald Henderson, and a daughter, who married Judge Nathaniel Boyden, the family traits being admirably preserved in a grandson, Archibald Henderson Boyden, sometime mayor of Salisbury. Another son of Richard Henderson, and a younger brother of Chief Justice Henderson, was John Lawson Henderson, who often represented the Burrough of Salisbury in the General Assembly, was Comptroller of the State, and Clerk of the Supreme Court, and died in Raleigh in 1834. Still another son was Pleasant Henderson, who removed to Cabarrus County.

A bit of romance attaches to the maternal line of the Chief Justice. His mother was Elizabeth Keeling, and she was a daughter of Lord George Keeling, so doughty a defender of the Protestant faith in Ireland that he was expelled from Parliament and fled to the State of Virginia, where after getting together enough money by fishing with improvised nets in the Rappahannock to pay the expenses of his affianced, Miss Bullock, of crossing over from Wales to Virginia, they were happily married and became the parents of Elizabeth, aforesaid, the mother of Chief Justice Henderson. And albeit Elizabeth in time became the first lady of the land, she was so careful and thrifty a housewife that she taught her sons, who were to become law-givers, statesmen and jurists, the gentle art of carding and spinning.

The great Chief Justice was no less fortunate in his

friends and neighbors and in the county of his birth than in his ancestry. The county of Granville, bearing the proud name of John Carteret, Earl of Granville, stretching from the everlasting hills on the border well into the cotton belt in the east, was in itself a vast domain. In the hill country, on Nut Bush Creek, a few miles from the waters of the fast flowing Roanoke, was born 6 October, 1772, Leonard Henderson. Hard by his home was Williamsboro, named for Judge John Williams, whose sister Leonard's paternal grandfather had married. And at Williamsboro was Springer College, and Saint John's Church, and the home of John Stark Ravenscroft, first Bishop of North Carolina, and of John Penn, signer of the Declaration of Independence, of Col. Robert Burton, member of the Continental Congress, of John Lewis Taylor Sneed, afterwards Chancellor of Tennessee, of Robert Goodloe Harper, of lordly Governor Turner, and a little later of the splendid classical school of Reverend Doctor Alexander Wilson; of William Robards, Treasurer of North Carolina; of William Hill Jordan, most eloquent of divines; of Patrick Hamilton, grandfather of the accomplished general counsel of the Coast Line, and of the Hargroves, Bullocks, Carringtons, Roysters and Baskervilles, gentle folk possessed of broad acres, troops of slaves and dogs of all degrees. Near the end of the eighteenth century, William Lee Alexander invaded this charmed circle and bore away Elizabeth, sister to Leonard. But we shall forgive him for the gift of a grandson, sturdy scion of sturdy stock, who now sits upon this bench. It may not be uninteresting to note that this section was a close second to Chapel Hill as a suitable site for the location of our University; that at Williamsboro both the Judge and Solicitor resided, and that from the Williams family of Williamsboro, descended Gen. R. F. Hoke, Chief Justice Pearson, John Sharp Williams, of Mississippi; Richmond P. Hobson, of Alabama; Hoke Smith,

of Georgia; Calvin Graves, R. B. Glenn, the Settles and Dockerys, and that great teacher and sweet spirit, Ralph H. Graves. Williamsboro of the eighteenth century was not without its attractions—a well ordered race course—the best in the State—and a generous tavern, for such the hotel was called, modeled after an English coffee house, and presided over by Col. Samuel Henderson. Here judges and lawyers and travelers of all kinds were hospitably entertained. Here George Washington paid a short visit, and from here went forth hunting parties into Virginia and up and down the fast flowing Roanoke. Perhaps the familiar name, “The Lick,” by which Williamsboro was then called, had reference to the habits of the deer and to the spot where weary travelers, as well as the antlered monarchs of the forest, might gather for refreshment. Often making one of these parties was Pleasant Henderson, a brother to Leonard, who had removed to Cabarrus and married. We are indebted to this man, for from him was lineally descended one who but lately passed from earth, beloved beyond any man of his day, bearing the grand old name of gentleman—Hamilton C. Jones, of Charlotte.

The Henderson home was called “Jonesboro,” and the plantation, containing some six hundred acres or more, stretched across Little Island Creek, another tributary of the Roanoke. Across from “Jonesboro” was “Montpelier,” the home of Judge Williams, and in the distance was the hospitable “Burnside,” where the Hamiltons lived, and nearer to the village stood the “Sneed Mansion House,” and not far away was “Belvidere,” the romantic home of Captain Jack Eaton, and “Nine Oaks,” where resided Broomfield Ridley, who married into the Henderson family and moved to Tennessee, becoming the ancestor of judges and doctors of divinity, and in easy reach stood “LaGrange,” owned by John Hare, Esq., a friend of the Hendersons. We may pause to remark that it was in this vicinity that an

incident in the early life of Edwin G. Reade, then a penniless youth, turned his mind to the law and gave to North Carolina one of its clearest-headed jurists. The home and its environs made an impression upon the life of the future Chief Justice. Even in ruins, says Dr. Kingsbury, Williamsboro is the most antique village to be found. It lacks but another Goldsmith to become another Sweet Auburn of the Plains. There is a ruggedness in the foothills of our mountain system, a serenity in the solemn forests of oak and pine, a spirit of reflection in the fast flowing streams hastening to swell the tide of the Roanoke, on whose banks the red man had but lately pitched his tents and then silently folded them forever, that made of Leonard Henderson a man. Here grew up the boy, occasionally making a visit to his relations in Salisbury, frequently mingling in the society of Hillsboro and Oxford, but always retaining his individuality. His education was confined to the instruction of a local teacher, Rooker by name, introduction to the Greek and Latin classics by Rev. Mr. Patillo, a Presbyterian clergyman, the course of learning prescribed at Springer College, and one or two sessions at Salisbury. This preliminary work accomplished, he began the study of law in real earnest, and drank deep from the fountains, guided in his task by Judge John Williams, his relative. In 1795 he married his cousin, Frances Farrar, a niece of Judge Williams, and of this union three sons and two daughters reached maturity and married, to-wit: Archibald Erskine Henderson, Dr. W. F. Henderson and John L. Henderson, Frances who married Dr. W. V. Taylor, and Lucy who married Richard Sneed. Shortly thereafter he was appointed Clerk of the District Court of Hillsboro, where he resided for several years. The State was then divided into a small number of districts, in each of which a court of supreme jurisdiction was held twice a year, and as each district comprised several counties, the clerkship

must have been an office of no little emolument as well as dignity.

“The district system of courts was abolished in 1806, and the present plan by which a Superior Court is held at least twice a year in each county, took its place. The State was divided into six circuits, and a judge was elected for each circuit. The judges were not required to reside in their circuits, and they might ride the circuits to suit themselves, but no judge might ride the same circuit twice in succession. The Supreme Court was held in Raleigh, by the same judges, twice a year, in the intervals of the Superior Court ridings. Two years after the adoption of the Superior Court system, Leonard Henderson was chosen by the General Assembly to fill a vacancy caused by the death of his relative, Judge McCoy, and removed his family from Hillsboro to Williamsboro. The General Assembly at that time was composed of members of the Republican party, while Judge Henderson was an ardent supporter of Hamilton and Madison. At the same session of the General Assembly, David Stone was chosen Governor of North Carolina, he being at that time a leader of the Republican party. The election of Mr. Henderson in these circumstances was a high tribute to his character and eminent qualifications.”

After eight years' service as a judge, upon the meagre salary of \$1,600.00 per year, he resigned his office and resumed the practice of his profession at Williamsboro. Judge W. H. Battle assigns as a reason for his resignation, that a man of limited means with an increasing family, could not well afford to perform the arduous duty of riding two circuits, composed of ten counties each, and of assisting to hold two terms of the Supreme Court, for so small a salary. Neither official dignity and repose, nor a just sense of public duty could prevent such a man from returning to a profession whose emoluments might supply the increasing wants of his family.

Soon after his return to Williamsboro, though the exact date is not known, Judge Henderson opened the first law school ever established in the State. If this school had its beginning prior to 1810, it was probably the first law school established in the United States. Judge Henderson is therefore justly entitled to be called the "Father of North Carolina Law Schools." Doubtless it was while students at "Jonesboro" that Richmond Pearson and W. H. Battle dreamed of the day when they too would establish schools of law, modeled after that of Leonard Henderson, and become the idols of their boys and wear the ermine, even as did their beloved preceptor, and "Jonesboro" became the father of Richmond Hill and of the University Law School. Attracted by the fame of Judge Henderson's law school and by the culture and refinement of its surroundings, generous youth from far and near gathered to receive instruction in the law. Among others were Richmond Pearson, William Horne Battle, Judge Robert Ballard Gilliam, Judge Burton and Governor H. G. Burton.

In an appreciative and faithful sketch of Judge Henderson, by Judge Battle, we are told that he did not deliver regular lectures, nor appoint stated hours for recitations, but directed the studies of his pupils, urging them to apply to him at all times for the solution of their difficulties, and was never better satisfied with them than when by their frequent applications to him for assistance, they showed they were studying with diligence and attention. As an instructor Judge Henderson was thorough and accurate. While he did not formulate the case-system of instruction, the credit of this great discovery belonging to Prof. Langdell, of Harvard, still, if tradition count for aught, his young students were not ignorant of concrete cases, selected by their teacher from the vast volume of business dispatched by him as a judge. Indeed, Richard Bullock, Esq., the wealthiest man in the community, and a justice of the

peace, often had his patience taxed to the limit by the enthusiasm of these twigs of the law, as they valiantly flashed their maiden sword in defence of hapless offenders in his court. Is it not, after all, the office of a law school to train men to think, to be firm, to be obedient to constituted authority, to frown down upon lawlessness, to create a healthy, clean public sentiment—rather than to give them something practical? In a word, to teach law in the *grand* manner, and to make great lawyers. Was Judge Holmes correct in saying, “It is from within the bar and not from outside that I heard the new gospel that learning is out of date, and that the man for the time is no longer the thinker and the scholar, but the smart man, unencumbered with other artillery than the latest edition of the Digest and the latest revision of the statutes”? If he was, were it not well to abolish the quizzing process? Henderson and Pearson—Gamaliel and Saul—these men would rather their students reasoned correctly, though they gave a wrong answer, than that they reasoned wrong and stumbled upon the right answer.

Judge Henderson was a thorough-going Federalist. He belonged to that class mentioned by Justice Conner in his sketch of Gaston who were apprehensive of the political future of our country under the guidance of Jefferson. He could but anticipate the day “when in the State of New York, a multitude of people, none of whom have had more than half a breakfast, or expects to have more than half a dinner, will choose a legislature, and when on one side a statesman will be preaching patience, respect for vested right, strict observance of public faith—on the other will be a demagogue, vaunting about the tyranny of capitalists and money lenders, and asking why anybody should be permitted to drink champagne and ride in a carriage, while thousands of honest folk are in want of necessities, and he could but ask himself which of these two was likely

to be preferred by a working man who hears his child cry for more bread. And he saw danger and danger only in the teachings of Jefferson, the Idealist, if not the demagogue (!), of Jefferson who was then teaching that "constitutions should not be looked upon with sanctimonious reverence, nor deemed like the ark of the covenant, too sacred to be touched, that laws and institutions should go hand in hand with the advance of the human mind, that the office of judge should be for four or five years, which would bring their conduct at regular periods under revision and probation."

These things were most shocking to the Federalists of that day, and yet it is but a truism that no constitution has ever been written which did not bear the impress of Jefferson's mind, and we of the twentieth century can thank the God of nations equally for Hamilton and Marshall and for Jefferson and Jackson, for Henderson as well as for Macon. The resultant of these contending forces is "The States," time's noblest offspring. We have no fear for our country, nor will capital and labor clash so long as legislative bodies shall continue to enact laws protecting childhood, shortening hours of labor, creating old age pensions, regulating public service corporations, taxing incomes, and so long as the courts of last resort see to it that coaches and six are not easily driven through these beneficent statutes. One who seeks the formative period of political opinion in America, must look to the State Conventions held at the end of the eighteenth century. The Convention for North Carolina convened in Saint Matthew's Parish Church, Hillsboro, in 1788. There the parties lined up for battle, and on one side or the other from that day until the war drum sounded in 1861, the people of North Carolina, differing from each other upon the fundamental principles of government, contended as two strong men standing face to face. Samuel Johnson, President of the

Convention, and Davie and Iredell, founders of the Federalist party, afterwards becoming the Whig party, opposing, and by a vote of 184 to 84, vanquishing Wiley Jones, Timothy Bloodworth and other tribunes of the people, leaders of the Republican party, subsequently becoming the Democratic party. These leaders found valiant allies in Nathaniel Macon and the Henderson brothers, respectively. While the victory perched first on one banner and then on another, the Republican-Democratic party ever keeping close to Jefferson, came into the ascendant, and in 1789 at Fayetteville reversed the action of the Hillsboro Convention. In a few short years, Gen. W. R. Davie, the aristocratic leader, went down in defeat before Willis Alston in a heated contest for Congress. Whereupon General Davie, our erstwhile representative at the Court of Napoleon, became so much disgusted, not only on account of the turn of affairs and of his own defeat, but particularly on account of the manner in which it was brought about, his rough and ready antagonist, Willis Alston, having originated and circulated a most laughable joke which did much to create a sentiment hostile to the General, that he removed to more congenial regions in South Carolina.

The fame of Leonard Henderson rests not mainly upon his capacity as a teacher, but upon his eminent qualifications as a judge of this Court. His pupil, Judge Battle, states that he was unquestionably a man of genius and in early life had studied with assiduity and success the principles of the common law and had made himself familiar with its grounds and reasons. He was never content until he had thoroughly comprehended whatever he met in the course of his reading. "On one occasion while he was a student, he came upon a passage in Bacon's Abridgement, which he could not understand, and his teacher being from home so that he could not get it explained, he came very near throwing aside his books in despair and abandoning

the profession forever. He had an honest as well as strong mind, and in all his arguments we find predominant an anxious search after truth. For this reason he was restive when he found himself opposed by precedents which he thought were unsupported by principle. Whatever fault he had as a judge was owing to this disposition, but notwithstanding that, he must always be regarded as standing high among those who before and after him have adorned the Supreme Court bench of North Carolina." His services as a Supreme Court Judge embraced a period of fifteen years and his opinions may be found reported in the 4 to the 17 N. C., inclusive.

In 1825 an interesting question arising out of the doctrine of warranty, was presented to this Court in the case of Taylor v. Shuford, 11 N. C., 129. Mr. Badger, with his usual force and clearness had contended that a deed without covenants of warranty would not pass an after acquired estate to the original grantee, his argument being that conveyances which operate without transmutation of possession as releases, grants of incorporeal hereditaments and deeds which owe their operation to the statute of uses, have no such effect of themselves and that they pass only what the grantor hath and if he hath nothing they pass nothing. Mr. Badger further contended that if the grantor afterwards acquires title, it inures to himself and not to the grantee. But, if warranty be added to such conveyance, then by force of the warranty and not of the conveyance, the grantor is estopped and title subsequently acquired shall inure to the benefit of the grantee. The inference is conclusive from those cases that no grant, release or deed operating under the statute of uses creates any bar except by force of an express warranty annexed to it. With this technical, though cogent reasoning of Mr. Badger, Chief Justice Henderson took issue with some tartness, as the opinion will show, and in his usual direct fashion, thus: "If A sells to B by indenture,

he thereby affirms that he has title when he makes his deed, and if he had not and afterwards acquired one, in an action by him against B, the title of the latter prevails, not because A passed to him any title by his deed, for he had none then to pass, but because A is precluded from showing the fact." A vast amount of learning has been exhausted upon this abstruse question, as may be seen by reference to Prof. Mordecai's instructive and suggestive Law Lectures, title, "Estoppel by Warranty." It must be highly gratifying to the descendants of Chief Justice Henderson that his decision in *Taylor v. Shuford* was finally adopted by the Supreme Court of the United States in *Van Ranselar v. Kearney*, 11 Howard, U. S., 298.

Judge Henderson's style, as shown in his reported opinions, was clear, crisp and aphoristic. Thus after deciding that the right of trial by jury must be sacredly preserved and that an act of the Legislature which simply permits an appeal is not a compliance with the constitutional guarantee of trial by jury, and after construing the word "ought" to mean "must" and to be imperative, he concludes: "It is sufficient for the creature to know the will of the creator. Obedience is then a duty without an express command." In arguing this appeal, Potter, on behalf of the appellant, declares that "it was enough for his purpose to say that if he had shown that the acts giving jurisdiction are unconstitutional, any proviso saving the right of appeal, cannot make them constitutional." All of which is respectfully submitted for the consideration of the newly discovered Recorder's Courts. So again in *Britton v. Israel*, 10 N. C., 225, Judge Henderson boldly declares that even where there is an express warranty of soundness, if the unsoundness be apparant, and, therefore, must have been known to the purchaser, no action shall lie.

As was said by Judge Battle in his Memoir of Chief Justice Henderson in the University Magazine for Novem-

ber, 1859, the first three judges of our Supreme Court, Hall, Henderson and Taylor, were especially desirous to settle for North Carolina a system of law founded upon the common law of England, modified, indeed, to some extent, to suit the peculiar nature of our institutions and altered in many respects by legislative enactment. In this attempt they were greatly aided by the argument of a bar which had no superior, and hardly an equal, in any State of the Union. The truth of this will readily be acknowledged by those who read the names of Archibald Henderson, William Gaston, Thomas Ruffin, Moses Mordecai, Gavin Hogg, Peter Brown, Joseph Wilson and Henry Seawell. Some of these were succeeded a few years later by Duncan Cameron, Francis L. Hawks, George E. Badger, Thomas P. Devereux, Frederic Nash, Samuel Hillman, William H. Haywood, Patrick Henry Winston, of Anson, and James Iredell. To be Chief Justice of this Court and to be worthy of the position—what honor in the gift of the people approaches it—what opportunity for good equals it? Taylor, Henderson, Ruffin, Nash, Pearson, Smith, Merrimon, Shepherd, Faircloth, Furches, Clark, *nomina venerabiles et clarissima*.

It is said that on one occasion Bishop Ravenscroft attempted to reprove the Judge because of his religious or want of religious views, whereupon the Judge retorted, "It were well for you to have your horse hitched before you crack your whip." Unfortunate for the religion of a hundred years ago, its doctrine was proven orthodox by apostolic blows and knocks, and the ecclesiastics persisted in churching such men as Thomas Jefferson, who were by no means scoffers or unbelievers, but earnest seekers after truth, and who today would be worshipping at the same altar with Chas. W. Elliot, Edward Everett Hale and William H. Taft. Religious tolerance did not characterize an age taught by blind mouths whose lean and flashy

songs grate upon their scannel pipes of wretched straw, an age which disfranchised Catholics and forbade Hebrews owning real estate—and yet it was such an age that pronounced the boldness of the Chief Justice to be skepticism. A Christian poet had not then sung—

“There lives more faith in honest doubt,
Believe me, than in half the creeds”—

Nor had we learned that if the normal man is let alone, to him the Heavens will declare the glory of God and the firmament show His handiwork. Such a man will finally come, like Napoleon, to declare, “I know men, and Jesus Christ was no mere man,” or like Webster to exclaim, “No man can read the sermon on the Mount and be an infidel.” Whatever in youth Henderson believed or disbelieved, he finally became a constant worshipper at and communicant of old Saint John’s Church, and his pew may now be seen by the curious pilgrim to this ancient shrine.

Judge Henderson was a large man physically. He weighed 212 pounds and was more than six feet in height. His hair was dark and profuse and well roached back from his forehead. His eyes were large and grey and in repose appeared rather heavy, says Dr. Kingsbury, seeming to be “in-taking rather than giving out.” His head was large, strikingly symmetrical, with forehead high, broad and exquisitely chiseled. Like all the Hendersons of his day, he had a remarkable length of chin, and his mouth was fixed well back in his head. This gave occasion to a witty Rowan farmer to remark when the Judge presided the first time in Salisbury, that he thought Baldy Henderson’s mouth was far enough back in his head, but the Judge had swallowed his. When the fiery Bishop Ravenscroft removed to Williamsboro, Judge Henderson did not call as soon as he might and the stern Bishop, who was preparing his hebdomadal homily, made no further recognition of the belated visit than a turn of the head, at once resuming his

task. The Judge withdrew and told his boys at the law school that he had been treated right for his discourtesy.

Judge Battle represents Judge Henderson as kind, affable and courteous, in domestic and social life. He possessed in no ordinary degree the love of his wife and children, and there was no man whose intercourse with his family was better calculated to win their confidence and affection. To this day his memory is held in tender affection by his descendants, one of whom, now serving his State in the legislative halls, and but yesterday in the roar of battle burying a leg upon the red hills of Virginia, will, like Gunga Din, "dot and carry one till the longest day is done," and another, mingling the blood of Henderson and Scales, respected by the whole State, has but entered upon his career. Judge Henderson was a delight to his friends, and his fine conversational powers, aided by a strong and energetic expression, always drew around him a circle of admiring listeners. With the people of the State he was always a favorite. No better illustration of this could be furnished than his election on the first ballot by the Legislature, together with a personal friend but political opponent, over four other gentlemen of great name and extensive influence in the State, Taylor, Seawell, Murphy and Yancey. He filled no other offices than that of the Clerk of the District Court at Hillsboro, Trustee of the University of North Carolina, and Judge of the Superior and Supreme Courts. One county and three cities in this and other States bear the name of Henderson, such an impression did this virile family make upon mankind.

On 13 August, 1833, the spirit of the Chief Justice passed to its reward. For him his contemporaries manifested both veneration and affection. A meeting of the Bar, at which Adolphus Erwin presided and Burgess S. Gaither was secretary, was held in August, 1833, at Asheville, and after adopting the usual preamble, the resolutions draugh-

ted by Samuel Hillman, Esq., declared of the late Chief Justice that his life and character had been identified with the legal history of North Carolina, his urbanity of manners, dignity of deportment, unspeakable honesty, unshaken independence and vigilant regard for every class of suitors, have maintained the universal respect and esteem of the profession, and his genius and talents have contributed much to erect a regular system of law and equity, adapted to our peculiar conditions, interests and institutions. A meeting of the Granville Bar was presided over by Judge J. R. Donnell and Hugh Waddell acted as secretary. The resolutions declared that "the judicial office in the government of laws is that in which the community have the profoundest interest, for in addition to the moral and intellectual elevation of him who fills it, is the respect felt for the laws themselves, and all good men deplore as a public calamity that such an office should ever be feebly filled, as to the mass of mankind the step is easy from a contempt for the organ to a contempt for the law itself. As a Judge the deceased was of inestimable value to North Carolina. The genius, the learning, the firmness which characterized him, insured the faithful execution of the laws and commanded the universal confidence of the public." Judge Ruffin was making preparation to visit Chief Justice Henderson at Williamsboro when news of the latter's death was announced. At once he hastened to Raleigh, and from the capital on the 21 August, 1833, wrote to John L. Henderson, a son of the Chief Justice:

"There is a vacuum here which none can fill. Time (what cannot time do of good as well as of evil) will, I trust alleviate the pangs of sorrow I now experience, and sweeten the chalice he has so lately embittered to you. Your father is gone now, but let his works live after him. Forget not his virtues, his purity of heart, his benevolence, his powerful and profound intellect, but while they are yet fresh in

your mind, let all that he said or did be carefully and frequently thought of so that the impression on your own mind may be permanent, and you thereby keep him constantly by you as a counsellor and guide."

The entire letter should be published as a model not only of elegance of diction, but of the love which bound together the two great Chief Justices, Ruffin and Henderson.

When the spirit of Daniel Webster was passing from earth, he signified his wish to be rolled upon his couch to the window that he might look for the last time upon the beautiful scenes surrounding "Marshfield," his country home, and that he might gaze once again into the honest eyes of his oxen which were driven near the bedside. When the spirit of the Chief Justice was passing from earth, 13 August, 1833, he requested his friends to permit him to gaze for the last time upon the scenes of his childhood, loved Montpelier, and the last words which he uttered were these: "I have passed the portals and see nothing terrifying."

Such was Leonard Henderson, racy, of the soil of North Carolina, bluff, honest, despising shams, thinking what he had a mind to and saying what he thought, worthy of his great name, a beacon light to guide you, Sirs and me, and and all generations to come, and an admonition to little men that hypocrisy and self-seeking and sycophancy and concealing one's honest opinions, are lies, hurtful not alone to the State but more hurtful to the man himself. With Mansfield he could say, "I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means."

Address of Acceptance by Chief Justice Clark.

Time tries all things. Well has the memory and fame of Chief Justice Henderson stood this stern test. More than three-fourths of a century have now gone since he passed from his seat on this bench, but his place in the opinion of the bar and people of North Carolina has in no wise abated from that given him when his loss was still fresh and when the spell of his personal magnetism and personal friendships still lingered. A beautiful county and two towns bear his name—an honor North Carolina has conferred on no other member of this bench save the loved and lamented Gaston.

Alone among the nations of the world, and alone in all the tide of time, England and the peoples that speak her tongue have adopted the system of precedents by which the opinions of a Judge or of a Court are considered ever after as authority (unless overruled) in other courts, upon the same or a more or less similar state of facts. In all other countries and in all other times, the law of a case has been governed by statute and when that was lacking the opinion of the court which tries a case has been considered as sound, and as likely to be right, as that of a former Court in a litigation between other parties. Priority of time is not considered as superiority of wisdom. Whatever the merits of the two systems, ours gives signs of breaking down. The immense increase in the number of volumes of reported cases has long ago placed a complete collection of the whole body of

the laws beyond the purse and beyond the time and capacity of research of the practitioner and taxes the means of state and city libraries. Encyclopedias and other compilations are unsatisfactory palliatives constantly requiring additions and further condensations. Amid such an enormous and growing tide of judicial utterances, from courts and judges of every degree of capacity and learning, there is already a hopeless conflict of decisions and with a little diligence an array of precedents can be culled to sustain either side of almost every proposition.

It would be a palpable absurdity for any court to merely count the number of cases on either side and award the result to counsel whose diligence can unearth the larger number of precedents, without reference to their value, based upon their reasoning and the reputation of the court or judge from whose pen they come. In this situation the courts are driven more and more to rely rather upon the opinion of the great leaders among the judges of known ability and clearness of view. In North Carolina, the bar and bench have thus always turned to the opinions of Chief Justice Henderson, with entire confidence, that when he has discussed a subject there is little that can be added and in full reliance upon the accuracy of the result that he has reached. Thus time and the process of events have added to and not diminished his value and fame.

The descendants of Chief Justice Henderson—lineal and collateral—have themselves rendered notable services to the State and have added to the ancestral honors descended upon them. The Court is glad to receive at their hands this portrait of the great lawyer and the great judge. The Marshal will hang it in its appropriate place upon the walls of this chamber by the side of his great compeers. The valuable, instructive and interesting address of Judge Winston in presenting the portrait will be printed in the next volume of our reports.

